

STATE OF MICHIGAN  
COURT OF APPEALS

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PAULA JOHNSON,

Plaintiff-Appellee,

v

STATE EMPLOYEES RETIREMENT BOARD,

Defendant-Appellant.

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UNPUBLISHED

March 17, 2005

No. 251505

Ingham Circuit Court

LC No. 03-000491-AV

Before: Hoekstra, P.J., and Neff and Schuette, JJ.

NEFF, J. (*concurring*).

I agree that we must remand this case for further proceedings, but respectfully conclude that the majority has missed the essence of the need for remand.

The respondent's independent medical examiner refused to conduct a medical examination of petitioner, a fact which clearly concerned the trial court which noted that while diagnosis of psychological disability can be highly subjective, the independent medical examiner was able to offer an opinion that petitioner was not totally and permanently disabled without a personal evaluation. A revision of MCL 38.21, effective before the hearings concluded in this case, requires a medical examination by the respondent's medical advisor. This factor alone leads me to conclude that our remand of this matter should include instructions to the trial court to further remand this case to the respondent to require compliance with the statute.

Further, I agree with the trial court's concern that the respondent refused to consider the additional report from petitioner's treating psychologist expressing the opinion that petitioner is totally and permanently disabled. It appears to me that the psychologist's earlier reports implied this opinion, but simply failed to use the magic words "permanently disabled." I would direct the trial court on remand to instruct the respondent to consider the report.

/s/ Janet T. Neff